

FINAL STATEMENT OF REASONS

This action amends provisions within the California Department of Corrections and Rehabilitation (CDCR) governing inmate grooming standards and inmate religious programs. The California Code of Regulations, Sections 3000, 3062, 3075, and 3210 are being amended to allow male and female inmates to maintain their hair at any length, not to extend over the eyebrow or cover the inmate's face, to define religious review committee, and to allow inmates a reasonable accommodation to attend a scheduled religious service if they are unable to do so due to conflicts. This regulation will apply equally to male and female inmates, and will be monitored to assure that the length of the inmate's hair does not alter the inmate's appearance or pose a health and safety risk. The regulations; however, do not allow the hair to substantially cover the facial area. The length of facial hair must not impede efficient identification of inmates, and cannot substantially alter the appearance of inmates to the point where quick identification cannot be made.

As a result of numerous lawsuits regarding the religious rights of inmates, i.e. *Warsoldier v. Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); and *In re Corey Williams*, Case No.: SC133840A, (February 2004), the Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, irregardless of their religion, race, ethnic background, or sex.

This "across the board" amendment of the grooming standards is further necessitated by the fact the Department would be required to evaluate each individual inmate's request for exemption due to RLUIPA. The Department would be unable to meet the staffing demands required to adequately review requests from inmates to determine if a specific inmate produces prima facie evidence to support a claim alleging a violation of the inmate's exercise of religion specific to grooming standards.

The amendment allows an inmate to attend a scheduled religious service by affording inmates a reasonable accommodation, which includes, but is not limited to modifying the work schedule, or use of accrued time or allowable break, granting of a job/assignment change, changes of regular days off, etc. When the request for a religious service requires a specific time, location and/or items not otherwise authorized, the request will be referred to a Religious Review Committee for review and consideration. Safety and security of the operations of the institution will be considered when determining whether to grant the accommodation. Use of reasonable accommodation shall in no way adversely impact an inmate's credit earning status.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

Section 3000 is amended to include the definition of a Religious Review Committee. This committee is formed and maintained at each institution and reviews and reaches a decision regarding requests for reasonable accommodation and/or access to religious services. This committee is necessary to fairly consider requests from inmates regarding religious services.

Subsection 3062(a) is unchanged.

Subsection 3062(b) is amended to specify that the face as well as the scalp shall have no lettering, numbering, or design of any kind. This is necessary due to the changes in these regulations that now permit inmates to have facial hair, i.e. short beards, sideburns, and mustaches. Lettering, numbering, and/or designs are not allowed on an inmate's hair, scalp, or face at any time.

Subsection 3062(c) is unchanged.

Subsection 3062(d) is amended due to the reorganization of the CDCR. The Division of Adult Institutions, Associate Directors are positions in the new CDCR that oversees the administration of the institutions within a region. The change is necessary due to the new re-organizational structure within the CDCR.

Existing subsection 3062(e) is deleted.

Existing subsection 3062(f) is renumbered to 3062(e) and amended to allow inmates to maintain their hair at any length, but it shall not extend over the eyebrows or cover the inmates' face or pose a health and safety risk. This text is a direct result of lawsuits, (*Warsoldier v. Woodford*, *Mayweathers v. Newland*, and *In re Corey Williams*) regarding the religious rights of inmates. The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. If hair is long, it shall be worn in a neat, plain style, which does not draw undue attention to the inmate. This is necessary to aid custody staff while inspecting and searching inmates for contraband.

Existing subsection 3062(g) is renumbered to 3062(f) and amended to allow inmates to possess and use approved hair holding devices based on Section 3190. The possession of personal property is a privilege and is subject to conditions and restrictions established in the Title 15. Allowable inmate property Department-wide is based upon assigned Privilege Group and/or assigned security level, and/or institution mission, and gender considerations. This regulation is necessary to allow inmates who want to maintain their hair at a length of three inches or more, to possess and use approved specific hair holding devices.

New subsection 3062(g) is adopted to assure that inmates shall be required to have their hair searched by custody staff to ensure it is free of contraband. Subsection (e) above requires that an inmate gather, pull back and band their hair if it is longer than three inches. Inmates will be required to unbraid and undo

hairstyles such as braids and cornrows; inmates will be required to take down their ponytails; and lastly, custody staff will be required to search inmates who wear dreadlocks to the best of their ability to ensure the hair is free of contraband. Hair searching procedures may include, but are not limited to a visual inspection, an inmate running their fingers or a comb/brush through their own hair, and/or custody staff utilizing a hand-held metal detector to search the inmate's hair. This regulation is necessary to ensure the safety and security of the institutions.

Existing subsection 3062(h) is deleted.

Existing subsection 3062(h)(1) is renumbered to 3062(h) and is amended to permit male inmates to have short beards that shall not extend more than one-half inch in length outward from the face. Existing language allowed mustaches and sideburns, but was restricted by not being allowed below the top of the upper lip nor extending beyond the corner of the mouth. These specific restrictions are deleted; however, all facial hair shall not extend more than one-half inch in length outward from the face. The one-half inch length was determined to balance the interests of security with the mandates of RLUIPA. The one-half inch length will allow custody staff to thoroughly search for contraband. Additionally, the one-half inch length is to prevent the substantial alteration of the inmate's appearance, which could aid their escape. The one-half inch length does not impede efficient identification of inmates. This means that it does not substantially alter the appearance of inmates to the point where quick identification cannot be made. Longer facial hair would pose a security concern.

Existing subsection 3062(h)(2) is deleted.

Subsection 3062(i) is amended to further ensure the personal safety of inmates who work around machinery or in high fire hazard areas, and for sanitary reasons for those inmates assigned to work in food preparation, processing, or serving areas. This regulation specifies that hair nets, safety head coverings, etc. shall be worn by inmates as deemed necessary by staff. This is necessary to ensure the further safety of the inmate as well as to ensure the cleanliness and non-contamination of the food served to inmates.

Subsection 3062(j) is unchanged.

Subsection 3062(k) is amended to specify that inmates shall not possess or wear any type of jewelry or other object intended to be worn as a body piercing adornment. This is necessary as it may pose a threat to the health and well being of inmates, in that instruments or devices used for piercing may not be sterile and could cause infections, as well as transmitting blood-borne diseases. Additionally, these provisions are necessary because body piercing may be ripped out during an altercation, and they would also pose an additional safety and security risk as piercing can be altered to make weapons.

Subsections 3062(l) through 3062(m) are unchanged.

Subsections 3075(a) through 3075(b) are unchanged.

Subsection 3075(c) is amended to inform inmates that if they noticeably change their appearance within a five year period, they will be charged for the cost of updating their identification photo/card. Current photos of each inmate are necessary to assure that staff can easily identify inmates for safety and security reasons. Each inmate carries their identification with them at all times for access into their work, classrooms, law library, for canteen purchases, etc.

Subsection 3075(d) is unchanged.

Subsection 3210(a) initial sentence is amended to afford inmates a reasonable accommodation, including, but not limited to, modifying the work schedule, or use of accrued time or allowable break, grant a job/assignment change, changes of regular days off, etc. This is necessary to comply with the RLUIPA, which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least

restrictive manner. Additionally, the use of reasonable accommodation shall in no way adversely impact an inmate's credit earning status.

Existing secondary sentence of subsection 3210(a) is renumbered to new subsection (b) and the text is unchanged.

Existing subsection 3210(b) is renumbered to new subsection 3210(c) and amended to add "accommodation" to the text as reasonable time and accommodation will be allowed for religious services. Also the word "institutional" is added to clarify that the accommodation for the religious services is in keeping with and specific to institutional operations and activities.

Subsection 3210(d) is adopted to make specific that a request for religious service accommodation requires a specific time, location and/or item(s) not otherwise authorized, be referred to a Religious Review Committee (RRC). The RRC shall be comprised of designated chaplains, a correctional captain or their designee and will review and consider requests for religious service accommodation. The RRC shall not grant accommodations if it would impact facility/unit safety and security, and the orderly day-to-day operations of the institution.

SUMMARIES AND RESPONSES TO PUBLIC COMMENTS:

PUBLIC HEARING COMMENTS:

Public Hearing was held on March 30 at 10:00 a.m.

SPEAKER #1:

Comment A: Commenter contends that he is a volunteer chaplain and that he has questions and concerns regarding the Religious Review Committee (RRC). In Section 3210 it states that the RRC will consider requests for items that are not already authorized by the Department, he asks what is authorized. He asks if the Department will consider requests from minority faiths and non-traditional religion since the only things that are currently authorized are the primary faith groups that are already represented in the Department.

Accommodation: None.

Response A: Department contends that it will make every reasonable effort to provide for the religious and spiritual welfare of all interested inmates pursuant to Section 3210. If an institutional chaplain (an employee hired and paid for by the institution) is presented with a request, the committee is tasked with determining if the request is necessary to practice the specific faith. For example, a Muslim inmate requests a prayer rug. The religious review committee *may* contact the Imam, a community volunteer, to verify the legitimacy of the request and act accordingly. The same would be true with any minority faith, the committee is required to verify the legitimacy of the request. However, safety and security considerations are also addressed as custody staff are a part of this committee.

Comment B: Commenter asks who will select the designated chaplains on the RRC? What qualifications will be required of them? Will they have to show extensive interfaith experience and be familiar with minority and non-traditional faiths? He contends that in the past there have been a number of chaplains who are the ones who primarily discriminated against the minority faiths and against the non-traditional religions. He does not want those types of chaplains making the determination about the different faith practices.

Accommodation: None.

Response B: Department contends that representatives of the local religious review committees are based upon local authority only. Institutional chaplains are State employees who are hired and

paid for by the local hiring authority at each individual institution. Qualifications for chaplains hired by the Department are specified in the Minimum Qualifications (MQ) which are stated on each State Exam Bulletin or State Job Opportunity Bulletin. Each person applying for a Chaplain's position must meet these MQs, the same as every State employee. Each Chaplain must meet civil service qualifications and meet the State Personnel Board's requirements for hiring. Furthermore, each RRC member will possess a broad base of knowledge regarding various aspects of majority and minority religions. The religious review committee may contact a community volunteer or a religious leader specific to the religion to verify the legitimacy of any request and act accordingly. The RRC is required to verify the legitimacy of the request.

Comment C: Commenter states that in Section 3210 space for a substantial number of inmates will be provided, he asks what number of inmates the accommodation is based upon? How will the Department determine what is an appropriate number to accommodate, is it based upon the recommendations by the American Correctional Association, one chaplain for every 500 inmates? He asks if it will be based on the inmates who profess a particular faith or will it be based on the inmates who make use of chaplains in religious services. He states that there may be 3,000 Protestants or Christians in the institution, but there might be only 55 or 60 who actually go to church services or use a chaplain. However, there might be different faith groups who only have 200 inmates at an institution, but all 200 of them would attend services and make use of the chaplains. He asks how that is determined.

Accommodation: None.

Response C: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 113435.9, the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. The above Comment pertains to Section 3210(b). Text in this subsection was merely renumbered from existing subsection (a). Only regulatory text that is indicated by underline or strikethrough will be considered for comment.

Comment D: Commenter contends that it is important that the Department make an effort to go to experts in the outside religious communities when determining religious policy. He states that decisions are typically made by individuals who are administrators who really don't have a full understanding of the religious practices and they don't go to people who are known experts in the area to ask what they need. He states that ultimately it has led to great cost to the Department, which he would like to see stopped. By developing policies that don't include the voices of the people in the traditions that you're trying to accommodate, then the regulations are opposed or eventually ruled on by the court in their favor. He states that the American Academy of Religion is the largest and oldest organization of religious scholars and theologians in the world, and they address Sikh issues, along with Native Americans, Wiccans, and Pagans, and 255 different religions are recognized and represented. They testify before Congress regarding their religious expertise.

Accommodation: None.

Response D: See Speaker #1, Comment B. Also, the Chaplains hired at our institutions are not required to have a specific knowledge of other religions, but rather a broad base of knowledge. They do, however, facilitate requests from other religions. Department contends that the voices of both minority and majority religions are heard, and that community volunteers and religious leaders from various religions are consulted to facilitate requests.

SPEAKER #2:

Comment A: Commenter contends that he defends the civil rights of Sikhs in the US including prisoners. He states that these regulations will have a significant impact on five Sikh inmates. He contends that if sensible amendments or clarifications are made to the regulations it will prevent the need for his organization to file a lawsuit against the Department for its treatment of Sikh inmates. These five inmates have not been allowed to wear their religiously mandated turbans, and have been penalized and humiliated for maintaining unshorn hair. They have been penalized by loss of recreation time, loss of early release credits, extra cleaning duties and loss of some phone privileges.

Accommodation: None.

Response A: Department contends that Section 3062(f) allows inmates to possess and use approved hair holding devices based on Section 3190. Section 3190 (h)(4) allows special purchases of religious items, subject to approval. Safety and security of the operations of the institution will be considered when determining whether to allow the special purchase or grant the accommodation. Additionally, the regulations do not allow the hair to substantially cover the facial area. The length of facial hair must not impede efficient identification of inmates, and cannot substantially alter the appearance of inmates to the point where quick identification can be made. The one-half inch length was determined to balance the interests of security with the mandates of RLUIPA. The one-half inch length will allow custody staff to thoroughly search for contraband. Additionally, the one-half inch length is to prevent the substantial alteration of the inmate's appearance, which could aid to their escape. The one-half inch length does not impede efficient identification of inmates. This means that it does not substantially alter the appearance of inmates to the point where quick identification cannot be made. Longer facial hair would pose a security concern.

Comment B: Commenter contends that five Sikh inmates have not been allowed to conduct prayer services and have been denied vegetarian meals.

Accommodation: None.

Response B: Department contends that Section 3210(a) affords inmates a reasonable accommodation to attend a scheduled religious service. Reasonable accommodation may include, but is not limited to, a modified work schedule, use of accrued time or allowable breaks, granting of a job/assignment change, changes of regular days off, etc. When the request for a religious service requires a specific time, or location and/or items not otherwise authorized, the request will be referred to a Religious Review Committee for review and consideration. Safety and security of the operations of the institution will be considered when determining whether to grant the accommodation. Lastly, regulations regarding Food Service programs were filed and approved, and went in to effect April 24, 2006. These regulations provide for religious diet requests, including vegetarian meals.

Comment C: Commenter contends that Muslim and Jewish inmates are allowed to cover their hair with their respective religious garb. He contends that Sikh's are not allowed to do so. He contends that the inmates are suffering psychological damage, and that it has been devastating for them not to wear their turbans. He states that in a meeting, the Department stated that new regulations regarding vegetarian meals would soon be implemented, in addition to the inmate grooming and religious program regulations. The Commenter states that he is pleased that these amendments would allow inmates to keep their hair long. He states that these changes were mandated by the Warsoldier Case and the Religious Land Use and Institutionalized Person Act, and that the Sikh Coalition supports them wholeheartedly.

Accommodation: None.

Response C: Department contends that in Section 3062(f) allows inmates to possess and use approved hair holding devices based on Section 3190, this includes Sikhs, Muslim, Jewish or other religious headwear. Section 3190 (h)(4) allows special purchases of Religious items, subject to

approval. Safety and security of the operations of the institution will be considered when determining whether to allow the special purchase or grant the accommodation. Regulations regarding Food Service programs were filed and approved, and went in to effect April 24, 2006. These regulations provide for religious diet requests, including vegetarian meals.

Comment D: Commenter contends that the regulations do not guarantee that Sikh inmates will be able to cover their heads with turbans. He states that Section 3190 offers no clarity on what types of hair holding devices are approved. He contends that correctional staff may selectively and arbitrarily allow or disallow inmates to wear religious garb. He states that Jewish and Muslim inmates are allowed to wear yarmulkes and kufis, but Sikhs may not wear turbans. He states this is discriminatory. He states that the Department would be hard pressed to argue that it has a compelling governmental interest, as articulated in RLUIPA, in allowing one form of head dress, but not others. He states that he has a memorandum from the Federal Bureau of Prisons that allows Sikh inmates to wear turbans. He states that if the safety of Federal prisons and of NY state prisons allows turbans then he does not understand why California would be compromised by the same practices. He requests that the proposed amendments explicitly state that inmates may wear turbans and other religious head dress.

Accommodation: None.

Response D: See Speaker #2, Response C. The Department's intent is to treat individual religions equally, with regards to allowing headwear. Neither yarmulkes, kufis nor turbans are specifically addressed in these regulations. The religious review committee may contact a community volunteer, to verify the legitimacy of the request and act accordingly. The same would be true with any minority faith, the committee is required to verify the legitimacy of the request. However, safety and security considerations are also addressed as custody staff are a part of this committee.

Comment E: Commenter contends that the regulations allow inmates to maintain a beard that is less than one half of an inch from the face. He contends that this may be interpreted to mean that inmates must trim their beards, which is a grave violation of Sikh practice. He stated that his beard is less than one inch from his face and he does not trim his beard. He states that when it is opened, his beard is long and flowing, but by rolling his beard up, he is able to maintain unshorn hair which is an essential practice in the Sikh faith. He states that since the regulations allow inmates to maintain long hair on their head, it would be arbitrary to not allow inmates to maintain long facial hair. He feels that there is no greater burden placed on prison officials by long hair on the face as opposed to on the head. He states that if his suggestions are implemented, the Department will avoid costly and time consuming litigation.

Accommodation: None.

Response E: Department contends that the regulation do not limit the length of hair on an inmates head; however, the regulations do not allow the hair to substantially cover the facial area. The one-half inch length does not impede efficient identification of inmates, and does not substantially alter the appearance of inmates to the point where quick identification can be made; however, longer facial hair would pose a security concern. The one-half inch length is in keeping with the Court's Agreement in the *Warsoldier* Case and the *Mayweather* Case in that there is a compelling governmental interest in the security of the prison and that the one-half inch length is the least restrictive alternative available to the Department to reach its compelling interest. Additionally, in the *Mayweathers* case, the Judge stated, "...while it is plausible that altering a six inch beard, or cutting very long hair may assist an escapee to elude capture, I must agree with Judge Strand that shaving a half-inch beard likely cannot." Also, Magistrate Judge Moulds concluded "when it comes to changing one's appearance through the growth or removal of hair, this court finds that not all beards are equal." The Department contends this decision upholds the regulatory language regarding one-half inch beard length.

Comment F: Commenter contends that there are at least 30 to 40 members of the Sikh faith and that he doesn't see many other people from other faiths traditions. He wants the Department to know that the Sikh community is very much concerned about this issue and they will keep coming to meetings until they feel like their religious rights are respected.

Accommodation: None.

Response F: Department appreciates the commitment and concern of the Sikh community. All comments either in writing or spoken at the Public Hearing were summarized and are being responded to in the Final Statement of Reasons.

SPEAKER #3:

Comment A: Commenter contends that he represents an organization of Sikh Gurdwaras in the US. (a Giardawara is a Sikh house of worship. He states that there are over half a million members of the Sikh faith in the US. He states that these regulations are of great concern to him. He states that Sikh wear an external uniform to bind them to the bridge of their faith and to remind them of their commitment to Sikh teachings at all times. He states unlike in other faiths where only the clergy are in uniform, all Sikhs are required to wear external articles of their faith, such as uncut hair and katomas. These represent a Sikh's connection to God and maintains a natural appearance.

Accommodation: None.

Response A: Department contends that inmates are issued state clothing, pursuant to Section 3030. Additionally, the Department contends that Section 3062(f) allows inmates to possess and use approved hair holding devices based on Section 3190, this includes Sikhs, Muslim, Jewish, or other religious headwear. Section 3190(h)(4) allows special purchases of religious items, subject to approval. Safety and security of the operations of the institution will be considered when determining whether to allow the special purchase or grant the accommodation.

Comment B: Commenter contends that the Sikh guidelines require unshorn hair. The removal of hair for a Sikh is a major taboo, and a moral transgression the same as committing adultery. He states that in the 18th Century, Sikh's were persecuted and forced to convert to other religions and remove their turban. Instead, they would choose to cut off their head because they would sacrifice their lives rather than give up their uncut hair and turbans. Commenter is pleased that the Department has proposed these regulations and endorses it wholeheartedly.

Accommodation: None.

Response B: See Speaker #2, Response E. Also, Speaker #3, Response A.

Comment C: Commenter contends that Sikh's must wear a turban as a part of their faith. He contends that the regulations do not specify which hair holding devices are approved. He states that the Sikhs neatly maintains their long hair in a turban, which is a piece of cloth tied around the head. There is no prescribed lengths of the turban. The Sikh Code of Conduct is clear that the Sikh may not wear a cap or hat. He contends that there are Muslim and Jewish inmates that wear their skull caps. He requests that Sikh's be able to cover their head with a turban. He states that it will cause no harm to any other inmate.

Accommodation: None.

Response C: See Speaker #2, Response D. Also, Department contends that Section 3062(f) allows inmates to possess and use approved hair holding devices based on Section 3190, this includes Sikhs, Muslim, Jewish or other religious headwear. Section 3190(h)(4) allows special purchases of religious items, subject to approval. Safety and security of the operations of the institution will

be considered when determining whether to allow the special purchase or grant the accommodation.

Comment D: Commenter contends that the proposed regulations state that the inmates will be allowed to maintain beards that are one-half inch in length outward from the face. He states that Sikhs keep their hair unshorn as part of their religious practice. He states that his beard is long and flowing, however, other Sikhs have their beards tightly rolled less than an inch from the face. He states that from reading the text, it seems that Sikh inmates will be able to comply with this regulation as long as they are able to keep their beards rolled up tightly. He is concerned that prison officials will read this regulation to mean that the Sikh must trim their beards so that it extends no more than one half inch from the face. He requests that the regulations make clear that the inmates are not required to trim their beards, but only to keep their beards less than one half an inch from the face. He contends that if inmates can wear their head hair as long as they want, it makes no sense to have restrictions on facial hair. He requests that Sikh inmates be allowed to maintain their beards one-half inch from their face without cutting. He thinks that the Department wants to ensure that religious rights for Sikh inmates are respected. It is his intention to work with the Department to ensure that its safety interest and committee interest are both met. He requests that the regulations, as they are finally adopted, reflect his concerns and will bring no additional harm to the prison population, and will respect the Sikh religious requirements.

Accommodation: None.

Response D: Department contends that inmates' beards shall not extend more than one-half inch in length outward from the face. This is a security issue and necessary for minimal escape prevention requirements. The one-half inch length does not impede efficient identification of inmates. This means that it does not substantially alter the appearance of inmates to the point where quick identification cannot be made. Longer facial hair would pose a security concern. The one-half inch length is in keeping with the Court's Agreement in the *Warsoldier* Case and the *Mayweather* Case, in that there is a compelling governmental interest in the security of the prison and that the one-half inch length is the least restrictive alternative available to the Department to reach its compelling interest. Additionally, in the *Mayweathers* case, the Judge stated, "...while it is plausible that altering a six inch beard, or cutting very long hair may assist an escapee to elude capture, I must agree with Judge Strand that shaving a half-inch beard likely cannot." Also, Magistrate Judge Moulds concluded "when it comes to changing one's appearance through the growth or removal of hair, this court finds that not all beards are equal." The Department contends this decision upholds the regulatory language regarding one-half inch beard length.

SPEAKER #4:

Comment A: Commenter contends that he represents Sikh's regarding harassment in school, housing and employment problems, legislative actions, and in issues such as these regulations. He contends that there are approximately 150,000 Sikhs residing in California. However, Sikhs suffer on a daily basis regarding discrimination, prejudice and harassment. He wants to commend the Department for its efforts to allow inmates to practice their religious and spiritual beliefs, but hopes it will go farther in allowing Sikh's to practice their faith and to be honored and respected while incarcerated, like Christian, Muslim, Jewish and other religions. Inmates who practice their faiths are better behaved inmates, and often are able to use these spiritual tools to increase the chances of their own behavioral rehabilitation and improve their chances before they are released to the streets. He contends that Sikh's have been discriminated against for many years, and has increased since 9/11. He states that the Sikhs are not understood in the institutions or throughout the country.

Accommodation: None.

Response A: Department acknowledges and appreciates the above comments. The Department's intent is to address each individual religions requests and concerns equally. Department also contends that all faiths are subject to the same safety and security requirements.

Comment B: Commenter contends that it is not a fashion for a Sikh to wear his hair long or in a turban, it is a necessity. Without his unshorn hair, a Sikh's faith would be compromised.

Accommodation: None.

Response B: See Speaker #2, Response E.

Comment C: Commenter contends that his organization is ready to sit down and work things out free of charge. He would provide counseling and any research on any information that the Department needs at this point to understand the Sikhs. He contends that the LA County Sheriff's Department recognizes the rights of a Sikh to keep his beard and his turban on at their Sheriff's Department.

Accommodation: None.

Response C: Department contends that as a result of numerous lawsuits regarding the religious rights of inmates, i.e. Warsoldier v. Woodford, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); Mayweathers v. Newland, 314 F.3d 1062, 1070 (9th Cir. 2002); and In re Corey Williams, Case No.: SC133840A, (February 2004). The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Department maintains contact with members of various religions and consults with religious volunteers and religious representatives regarding treatment of religious requests within the institutions in an attempt to keep the lines of communication open.

WRITTEN PUBLIC COMMENTS:

COMMENTS #1:

Comment A: Commenter contends that under Section 3062(e), the clause "a health and safety risk" should be clarified for purposes of standardization in order to prevent arbitrary enforcement between institutions.

Accommodation: None.

Response A: Department contends that there are numerous health and safety risks that may occur within the many facilities and vocational/work training assignments. There are specific jobs throughout the institutions, including, but not limited to, culinary positions, automobile mechanic, welder, firefighter, heavy equipment operator, etc, that would pose a health and safety risk if the inmate's hair was not in compliance with Section 3062(e).

Comment B: Commenter contends that in Section 3062(k), the Department should allow some type of stud placement in pre-existing body piercings to prevent infections.

Accommodation: None.

Response B: Department contends that if inmates suffer from any signs of infection, the inmate may request to be seen by a physician at the institution and will be treated accordingly. Body piercings may pose a threat to the health and well being of inmates, in that instruments or devices used for piercing may not be sterile and could cause infections, as well as transmitting blood-borne diseases. Additionally, these provisions are necessary because body piercing may be

ripped out during an altercation, and they would also pose an additional safety and security risk as piercing can be altered to make weapons.

COMMENTS #2:

Comment A: Commenter states that he is extending his condolences and is working diligently to end his criminality and gain control of the aspect of his character. He states that there is great value to society through genuine rehabilitation by education and therapy. He states that treatments provided by the Department for antisocial behavior are the Alcoholics Anonymous and Narcotic Anonymous – a 12 step program in which the second principle commands its participants to embark on a spiritual path.

Accommodation: None.

Response A: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 113435.9, the above comment is insufficiently related to the specific action or actions proposed. Section 3023 is not being amended, adopted or repealed by the regulatory action, and therefore does not require a response.

Comment B: Commenter contends that he has taken a Nazarite Vow from the Holy Bible, Book of Numbers, Chapter 6, Verse 5. He states that this vow collides with the now deleted Section 3062(e). He states that he was placed on “C” status and incorrectly deemed a program failure. He states he was punished for over 7 years because the Department refused to grant an exemption for his religious vow and spiritual position. He hopes that this type of discrimination can be avoided in the future.

Accommodation: None.

Response B: The regulations comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate’s exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. Department contends that these regulations now allow an inmate’s hair to be any length, but shall not extend over the eyebrows, cover the inmate’s face, or pose a health and safety risk. If the hair is long, it shall be worn in a neat, plain style, which does not draw undue attention to the inmate.

COMMENTS #3:

Comment A: Commenter contends that he is a Fire Captain with the Department of Forestry and has worked with the Conservation Camp program for 21 years. He states that inmate participation is voluntary and provides many benefits to inmates.

Accommodation: None.

Response A: Department contends that inmates that hold positions within the Department or outside in Conservation Camp programs must continue to abide by the Rules and Regulations of the Department. Department contends that these regulations allow an inmate’s hair to be any length but shall not extend over the eyebrows, cover the inmate’s face or pose a health and safety risk. The emphasis is whether long hair or a one-half inch beard would pose a safety risk when inmates are on the fire line. Local procedures specific to a fire crew or specific to one institution may address this issue.

Comment B: Commenter requests that the Department require those inmates who want to participate to sign a consent/release form where they willingly submit to the grooming standards of the CDF for

the following reasons: while in the camp program, these inmates are treated like firefighters and attempts are made to instill within each inmate the pride that comes with this vocation which involves looking the part; the vehicles used to transport inmate firefighters are emblazoned with large letters stating "CDF FIRE CREW." These inmates represent CDF to the public when they are unloaded to attack a fire or participate in a work project; lastly, firefighting is a dangerous environment. Hair is flammable. While there is a measure of protection provided firefighters by the personal protective equipment, it is only prudent for a firefighter to minimize the sources of ignition on their bodies. The less amount of facial hair that a fire crew member has, the less chance of a problem one would have on the fire line.

Accommodation: None.

Response B: See Commenter #3, Response A.

COMMENTER #4:

Comment A: Commenter contends that these regulations are a step backwards, and that the Department is making a big mistake regarding changes to the grooming standards.

Accommodation: None.

Response A: Department contends that these amendments to the Title 15 are a result of numerous lawsuits regarding the religious rights of inmates, i.e. *Warsoldier v. Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); and *In re Corey Williams*, Case No.: SC133840A, (February 2004). The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner.

Comment B: Commenter contends that inmates assigned to a conservation camp are involved with the public. He states that the inmates will look like "thugs/inmates" as they looked many years ago prior to the implementation of the current grooming standards. He contends that firefighting inmates should have a sense of pride and that the Fire Captain considered them as part of the team. They should be expected to maintain the same grooming standards that the CDF Captain abides by. He contends that inmates should be expected to maintain the same set of grooming standards as the staff they are working for in CDF, and those watching over them in the CDCR.

Accommodation: None.

Response B: See Commenter #3, Response A.

Comment C: Commenter contends that this regulation change is the wrong way to go for inmates participating in the camp program. He states that if inmates want a certain length of hair, then they should be allowed to do so inside of the prison walls, but they should not be allowed to participate in a camp program. He states that inmates earn 2 for 1 credit for their participation, which is a very good benefit, not to mention the positive influence the hard work and the daily routine provides some of these inmates. He states that some have never held a steady job in their lives.

Accommodation: None.

Response C: See Commenter #3, Response A.

COMMENTER #5:

Comment A: Commenter contends that Section 3062(h) has been amended to allow short beards not more than one-half inch long. He states that his religion requires him to have a traditional beard or goatee unrestricted in length. He states that this comes under the RLUIPA statute cited in the Notice for allowing hair on the head at any length.

Accommodation: None.

Response A: See Speaker #2, Response E.

Comment B: Commenter contends that the reasons cited in the Notice are to allow for a thorough search for contraband and to prevent alteration of appearance for the purposes of escape. He states that just as hair of any length on the head can be searched, so can a beard of any length be searched.

Accommodation: None.

Response B: See Speaker #2, Response E.

Comment C: Commenter contends that hair on the head grows longer than hair on the face. He contends that a long beard can aid in escape conflicts with the fact that long hair on the head can also aid in an escape. Also, since growing long hair on the head can result in a new photo at the inmate's expense, so can a new photo be taken when a beard of length is grown.

Accommodation: None.

Response C: Department agrees that any change in appearance may aid in escape. Inmates that alter their appearance by growing or shaving a beard and/or hair on the head will require a new identification photograph. However, the one-half inch length applied to beards is considered a maximum while maintaining reasonable safety and security precautions.

Comment D: Commenter contends that prior to the grooming rules being put into effect some years ago, there were no problems with escapes, etc., facilitated by having a beard of length in more than 100 years of the Department's history. He states that short of further judicial litigation, he proposes that inmates be allowed to grow facial hair without limit to length, as is allowed for hair on the head.

Accommodation: None.

Response D: Department contends that the commenter is incorrect in stating that there have been no problems with escapes, etc., facilitated by having a beard in more than 100 years of the Department's history. The Department's Offender Information Services Branch reported that there were 21 escapes from the Department's institutions and camps in 2005. There have been numerous escapes throughout the Department's history and varying escape methods have been utilized throughout the years, including, but not limited to altering one's appearance by cutting their hair or shaving their beards. The one-half inch length does not impede efficient identification of inmates. This means that it does not substantially alter the appearance of inmates to the point where quick identification cannot be made. Longer facial hair would pose a security concern. The one-half inch length is in keeping with the Court's Agreement in the *Warsoldier* Case and the *Mayweather* Case in that there is a compelling governmental interest in the security of the prison, and that the one-half inch length is the least restrictive alternative available to the Department to reach its compelling interest.

COMMENTS #6:

Comment A: Commenter contends that as he has read subsection 3062(h), and he is curious as to whether or not the interpretation of this regulation is left to the individual staff at each prison. He

states that his nephew in Centinela Prison has a goatee which seems to offend certain staff members at the prison, and is being told to shave it off.

Accommodation: None.

Response A: Department contends that these regulations are intended to be implemented on a statewide basis, and are not left to the interpretation of an individual staff. Department contends that beards and any element of a beard, including a mustache, sideburns or a goatee are all components of a beard. As long as it meets the one-half inch maximum length requirement, it is permissible.

COMMENTS #7:

Comment A: Commenter contends that he has concern with the half-inch limit on the length of facial hair. He states that as an Odinist, the importance of his hair is significant. It is a symbol of the life force gifted us by Odin himself. He states that as an ordained Gothi (Priest) he is expected to wear a full beard as well as full length hair. He states that the half-inch length does a disservice to adherents of his spiritual path that tend toward embracing that which is natural.

Accommodation: None.

Response A: See Speaker #2, Response E and Speaker #3, Response D.

Comment B: Commenter contends that the claim of security concerns with a longer beard enabling an escapee to change his appearance more drastically is moot, if not outright frivolous. He states that the Ninth Circuit Court covered this in the *Warsoldier* case.

Accommodation: None.

Response B: See Speaker #2, Response E and Speaker #3, Response D.

Comment C: Commenter states that the Federal Prison System's Policy is the least restrictive means. He states that if there is any real interest on the Department's behalf of complying with RLUIPA, then the same length and grooming of beards needs to be the rule as is the case with the hair on one's head.

Accommodation: None.

Response C: Department contends that as a result of numerous lawsuits regarding the religious rights of inmates, i.e. *Warsoldier v. Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); and *In re Corey Williams*, Case No.: SC133840A, (February 2004). The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, regardless of their religion, race, ethnic background, or sex. The Department cannot comment regarding the Federal Prison System's Policy regarding grooming, and if it does or does not differ from individual state's rights and the Department's individual obligation under the above mentioned lawsuits.

COMMENTS #8:

Comment A: Commenter contends that Section 3062(h) is too vague as to what a half-inch out from the face means. Can the beard be any length so long as it lays flat on the face? How long might it hang from the chin?

Accommodation: None.

Response A: See Speaker #2, Response E and Speaker #3, Response D.

Comment B: Commenter contends that this regulation regarding length of hair will end up in more litigation from religious practitioners. He states that the Department is wise to stick with regulating sanitary aspects if it wants to avoid future litigation and accommodate religious tenants.

Accommodation: None.

Response B: See Speaker #2, Response E and Speaker #3, Response D.

Comment C: Commenter contends that the regulation appears to be arbitrary, since the beard may be searched as easily as the hair on the head for contraband. He states that the Department has operated for decades with beards of any length and it did not collapse as a result.

Accommodation: None.

Response C: See Speaker #3 Response D.

COMMENTER #9:

Comment A: Commenter contends that the deletion of the former subsection (e) and the amended version of subsection (f) was a blessing from the Almighty, Jah Supreme, but deficiencies still remain. He states that amended version 3062(h) still places a burden on the exercise of his religious way of life as a Rastafarian. He states that the hair on the head is sanctified by the Almighty and that cutting, shaving, trimming, or rounding of the corners is prohibited by decree. He states that a razor or cutting device is not even permitted to touch a Rasta's locks or precepts. It is a direct violation. He states that this needs to be completely deleted just as the original 3062(e) was, which was equally oppressive.

Accommodation: None.

Response A: See Speaker #2, Response E and Speaker #3, Response D. Also, hair searching procedures may include, but are not limited to, a visual inspection, an inmate running their fingers or a comb/brush through their own hair, and/or custody staff utilizing a hand-held metal detector to search the inmate's hair. Safety and security of the institutions is of the utmost importance. The one-half inch length does not impede efficient identification of inmates. This means that it does not substantially alter the appearance of inmates to the point where quick identification cannot be made. Longer facial hair would pose a security concern.

Comment B: Commenter contends that as a result of disciplinary action taken against him in the past regarding Section 3062(e), there is a negative reflection on his classification score. He states that no provision has been made to re-adjust the classification scores of those it applies to nor has there been any provision to expunge all disciplinary documents relative to the deleted portions of Section 3062 from the Central Files of those who were punished. Commenter contends that he was forced to cut all 163 of his shoulder length locks off personally. Being that the barber program was temporarily suspended, he had to use a shaving razor and cut them off one at a time. He states as a result of dishonoring his vow of separation my crown has been cursed with hair loss as a reminder. He states that this experience was extremely painful spiritually and emotionally, and he contends that it violated his constitutional right to freely exercise his religion

without the threat of or actual execution of punishment for doing so. He states the damage has been done and cannot be undone and it fails to address years of damage it has already caused.

Accommodation: None.

Response B: Department contends that the regulations do not address a retroactive date for disciplinary actions. To re-adjust all classification scores and expunge all disciplinary documents from any inmates' file who received a disciplinary action due to rules violations is not required by the Settlement Agreement. However, inmates may appeal any situation they believe adversely affects them. Grooming Standard regulations regarding the length of an inmate's hair were promulgated in 1979 and were approved by the Office of Administrative Law, and therefore enforceable. Due to litigation, the Department has revised those regulations, and were in temporary effect on January 17, 2006.

COMMENTS #10:

Comment A: Commenter contends that he is pleased that the Department has finally decided to follow the intent and purpose of RLUIPA and the Federal Court rulings in *Warsoldier*, *Mayweathers*, *Cooper* and *Williams* cases, and not fight and delay its implementation.

Accommodation: None.

Response A: Department appreciates the Commenter's statement.

Comment B: Commenter contends that he is concerned with the issue regarding the length of beards after these regulations are passed. He states that he is of Sikh faith, and keeping his beard and hair is one of the most important precepts of Sikh faith. He states that in Arizona Prisons, Sikhs are exempt from the grooming standards.

Accommodation: None.

Response B: See Speaker #2, Response E and Speaker #3, Response D.

Comment C: Commenter contends that to avoid any further litigation and unnecessary expenses and violations of Sikhs and Jewish inmate's religious rights, he propose that there be no restrictions on the length of beards. He states that by the Department proposing a half-inch beard, the Department is singling out the Sikh and Jewish inmates. He states that if the length of the hair is not a security issue, then the beard should not be one, unless the reason behind the restriction is to harass inmates of Sikh and Jewish faiths. He sees no compelling reason and requests that the Department "see the light" regarding the restrictions on the length of beards.

Accommodation: None.

Response C: See Speaker #2, Response E and Speaker #3, Response D. Also, the Department's intent is to treat individual religions equally, not singling out any religion or individual inmate with regards to length of their hair or beard, or allowing headwear that has been approved by the RRC.

COMMENTS #11:

Comment A: Commenter contends that the regulations failed to identify the prospective costs in terms of saving money. He contends that the "saving" aspect will directly impact the costs of housing in terms of making available more money. He states that with 33 prisons, and with an estimated 3,000 inmates at each institution, the Department would be saving money by eliminating the need to pass out razors every week to inmates. He calculates that 4 razors a month per each inmate,

multiplied by 162,000 inmates, multiplied by 12 months would be 8,016,000 razors. He states that if only 30,000 inmates sought razors every two months, the cost savings would be about one million dollars.

Accommodation: None.

Response A: Department contends that there is no impact or cost to the private sector as stated in the Fiscal and Economic Statement. Additionally, the Department will continue to issue razors to inmates due to the fact that inmates must maintain their beard length at one-half inches in length and will continue to utilize razors.

Comment B: Commenter contends that he commends the Department for their commonsense approach to equality of treatment between male and female inmates.

Accommodation: None.

Response B: Department appreciates the Commenters' statement. The Department also contends that these regulations were a result of lawsuits and are in compliance with the Settlement Agreement stated in the Initial Statement of Reasons.

COMMENTS #12:

Comment A: Commenter states that he is attaching communications between Kern Valley State Prison Administrators/Respondents and the House of Yahweh Faith Inmate Coordinators, and replies of granted or partially granted (602) appeals, and memorandums of authorization. He states that religious orders for sermon tapes, books, Hebrew Holy Convocation and Feast Sabbath days calendar, dietary Kosher vitamins and supplements, Ceremonial prayer, hygiene oils and cosmetics are being held by the KVSP Mail Room and the R&R Staff who are refusing to issue them without an additional Memo of Authorization, specifically listing all approved religious vendors of all or particular non-Christian/Protestant faith groups.

Accommodation: None.

Response A: Department contends that subsection 3210(d) is adopted to make specific that a request for religious service accommodation requires a specific time, location and/or item(s) not otherwise authorized, be referred to a Religious Review Committee (RRC). The RRC shall be comprised of designated chaplains, a correctional captain or their designee and will review and consider requests for religious service accommodation. The RRC shall not grant accommodations if it would impact facility/unit safety and security, and the orderly day-to-day operations of the institution. The Commenter is correct in following Section 3084.1 of the Title 15 regarding the inmate's right to appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare.

Comment B: Commenter contends that he and another inmate have provided KVSP Administration with documentation of his previously approved religious headquarters publishers, vendors and other authorized distributors of the above listed items and materials, when his group was functioning between (1999 – 2005...) at Salinas Valley State Prison (prior subsequent to program change-mandatory transfer and classification action). He also prepared a memo for reauthorization and for dissemination to the designated departments of concern and delivered the original to various KVSP staff. The Commenter further states that meetings were set up to resolve these issues and were cancelled. He states the Chaplain stated that this religion was becoming a burden and that he was in violation of his religious affiliation and union contract regarding Protestant assembly. Commenter states that the Chaplain did allow access to the chapel, but that he was not available on specific dates.

Accommodation: None.

Response B: See Commenter #12, Response A.

Comment C: Commenter asks that in accordance with the dietary laws and ordinances of his faith concerning the removal of blood from meats and poultry, and what he is scripturally prohibited from consuming, that the Department address their dietary concerns and requests until such time as the Kosher Kitchen/Culinary Department is operational, which is scheduled in August 2006.

Accommodation: None.

Response C: See Speaker #2, Response B.

Comment D: Commenter contends that in order to establish a free exercise violation, an inmate must show the defendants burdened the practice of his religion by preventing him from engaging in conduct mandated by his faith without any justification reasonably related to legitimate penological interests. Commenter contends that to reach the level of a constitutional violation, the interferences or burden must be substantial interference with a tenet or belief that is central to religious doctrine.

Accommodation: None.

Response D: Department contends that the Ninth Circuit Court has opined that RLUIPA requires that the Department use the least restrictive means necessary to achieve its compelling interest in prison safety and security. The Department has been ordered to comply with RLUIPA, which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. The current regulations represent those least restrictive means.

Comment E: Commenter contends that the Equal Protection Clause requires that an inmate who is an adherent of a minority religion be afforded reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow inmates who adhere to the conventional religious precepts as long as the inmate's religious needs are balanced against the reasonable penological goals of the prison. Commenter contends that inmates have the right to be provided with food sufficient to sustain them in good health that satisfies the dietary laws of their religion.

Accommodation: None.

Response E: See Speaker #2, Response B.

COMMENTER #13:

Comment A: Commenter states that she applauds the Department for these proposed regulations. She states that the Sikh faith requires its adherents to maintain long hair and adoption of these regulations will ensure that Sikh inmates will no longer be penalized for following their religion. However, she contends that there are two specific tenants of the Sikh faith that remain in jeopardy. Commenter incorrectly cites Section 3063(h), however, the regulation in question is in Section 3062(h). Commenter contends that this specific text is amended to require that an inmate's facial hair can extend no longer the one-half inch from his face. She contends that this regulation should specifically include language that allows for inmate's facial hair to be rolled up neatly so long as it does not extend more than one-inch from his face. She contends that this would enable Sikh inmates to adhere to their faith, while at the same time help comply with the Department's desire to ensure that an inmate's appearance is kept neat and clean.

Accommodation: None.

Response A: See Speaker #2, Response E and Speaker #3, Response D.

Comment B: Commenter contends that absent from the newly proposed regulations altogether is language that addresses the importance and necessity to maintain a particular type of religious garb and/or headdress. She states that Jewish and Muslim adherents are allowed to wear their respective religious headdresses without any restrictions and that she would expect that similar policy be applied to Sikhs. She states that if protection of inmate safety and/or size of the turban is at issue, then the Department should work with the Sikh community to explore an alternative type of head covering that would be acceptable short of a full size and traditionally worn turban with the understanding that the safety of inmates and employees be of paramount importance.

Accommodation: None.

Response B: Department contends that in Section 3062(f) allows inmates to possess and use approved hair holding devices based on Section 3190, this includes Sikhs, Muslim, Jewish or other religious headwear. Section 3190 (h)(4) allows special purchases of Religious items, subject to approval. Safety and security of the operations of the institution will be considered when determining whether to allow the special purchase or grant the accommodation.

COMMENTS #14:

Comment A: Commenter contends that they strongly support these regulations and urge the Department to permanently approve the changes to Section 3062(e)–(f) and eliminate the hair length restrictions currently imposed on male inmates. Commenter states that RLUIPA prohibits the prison system from imposing a substantial burden on an inmate’s right to exercise his religion unless the restriction furthers a compelling interest. Commenter contends that RLUIPA requires the Department to use the least restrictive alternative method of furthering this interest. However, some male inmates’ religion forbid them to cut their hair, and the current policy forces them to choose between violating their religious beliefs and being punished for violating the prison’s grooming policy. Commenter further contends that applying the regulations across the board to men and women is a much better and less-restrictive alternative. Commenter states that lack of hair length restriction has not caused security problems at the women’s prisons, so it would enable the men’s prisons to further their compelling interest in security. It would allow male inmates to more freely exercise their religious beliefs.

Accommodation: None.

Response A: See Commenter #12, Response D. Also, Department is in the process of finalizing the rulemaking process and intends on filing the Final Rulemaking File with the Office of Administrative Law to permanently adopt these regulations.

Comment B: Commenter contends that these regulations should be made retroactive to the date RLUIPA was adopted, September 22, 2000. He contends that the Department has been ordered to comply with RLUIPA. He further states that the discipline imposed on inmates who refused to cut their hair was illegally imposed and should not remain on their records. He states that the past disciplinary actions will cause ongoing harm to the affected inmates, because some were designated as program failures and placed on C-status. The Department should expunge the inmates’ records of any discipline imposed on them for refusing to cut their hair for religious reasons. Commenter contends that many inmates lost their privileges, including the opportunity to accrue work credits and earn an earlier release date. Commenter contends that some inmates have been extensively punished similar to Billy Soza Warsoldier for refusing to cut their hair. He states that although lost phone or recreation privileges cannot retroactively be given back, the inmate should be compensated for the lost opportunity to earn credits.

Accommodation: None.

Response B: See Commenter #9, Response B.

COMMENTS #15:

Comment A: Commenter contends that they represent Corey Williams and were able to comment on earlier drafts of these proposed regulations. However, they contend that these regulations eliminate the hair length restriction for all inmates, and unlawfully infringe on inmates religious exercise in several ways. Commenter contends that Section 3062(g) requires inmates to undo braids, ponytails and other hairstyles in order to allow custody staff to search their hair for contraband. They contend that this is a reasonable requirement; however, there must also be language that prohibits custody staff from using this subdivision to harass inmates. Commenter states that this is of concern for inmates who wear hairstyles that are difficult to create.

Accommodation: None.

Response A: Department contends that as a result of numerous lawsuits regarding the religious rights of inmates, i.e. Warsoldier v. Woodford, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); Mayweathers v. Newland, 314 F.3d 1062, 1070 (9th Cir. 2002); and In re Corey Williams, Case No.: SC133840A, (February 2004) these regulation have been submitted to the Office of Administrative Law, and are in compliance and were agreed upon by Judge Verna Adams of the Superior Court of the County of Marin, State of California. The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, irregardless of their religion, race, ethnic background, or sex. Additionally, inmates shall be required to have their hair searched by custody staff to ensure it is free of contraband. Subsection (e) requires that an inmate, gather, pull back and band their hair if it is longer than three inches. Inmates will be required to unbraid and undo hairstyles such as braids and cornrows; inmates will be required to take down their ponytails; and lastly, custody staff will be required to search inmates who wear dreadlocks to the best of their ability to ensure the hair is free of contraband. Hair searching procedures may include, but are not limited to, a visual inspection, an inmate running their fingers or a comb/brush through their own hair, and/or custody staff utilizing a hand-held metal detector to search the inmate's hair. This regulation is necessary to ensure the safety and security of the institutions.

Comment B: Commenter states that Section 3062(h) provides that male inmates may have beards, mustaches, or sideburns that are no more than one-half inch in length. Commenter contends that it is an impermissible limitation under the RLUIPA. He contends that some religions prohibit any cutting of facial hair for any reason; therefore, a one-half inch length allowance is just as unacceptable as was the requirement that all inmates be clean shaven.

Accommodation: None.

Response B: See Speaker #2, Response E and Speaker #3, Response D.

Comment C: Commenter states that Section 3075(c) is amended to require that inmates pay for the cost of updating their identification photos if they noticeably change their appearance within a five-year period. Commenter contends that this requirement unfairly penalizes inmates who are not free to grow their hair under the revised regulations. He contends that this requirement violates

RLUIPA by unduly burdening the exercise of religion, and there is no compelling government interest in assessing this fee. He contends that the assertion that this fee is necessary is belied by the fact that the existing regulations already require the Department to update identification photos any time there is a distinct change in an inmate's appearance, and inmates are not charged a fee. He contends that the proposed amendment's transfer of cost to inmates serves no compelling penological interest.

Accommodation: None.

Response C: Department contends that it has complied with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, irregardless of their religion, race, ethnic background, or sex.

Additionally, inmates will be charged for the cost of updating their identification photo/card if they noticeably change their appearance within a five year period. As stated in the comment, the Department does update inmate photos; however, if the inmate chooses to change their appearance sooner than the Department's regularly scheduled updates, then the inmate must pay the costs associated with their change in appearance. Current photos of each inmate are necessary to assure that staff can easily identify inmates for safety and security reasons. Each inmate carries their identification with them at all times for access into their work, classrooms, law library, for canteen purchases, etc. The Department's budget does not allow for ongoing updates of an inmate's photo each time they choose to change their appearance.

Comment D: Commenter states that Section 3210 outlines the process for having a Religious Review Committee (RRC) determine whether an inmate should be afforded an accommodation to attend religious services or to use otherwise unauthorized items in those services. He contends that these regulations lack sufficient guidelines by which the RRC will make the determination. He contends that the regulations provides that the RRC would only deny an inmate's request if accommodating the request would directly impact institutional safety and security or the "orderly day to day operations of the institutions." He contends that the regulations should specifically require the RRC to explain in writing how the requested accommodation would impact institutional safety and security. He contends the possibility that affording an accommodation might impact the day-to-day operations of the institution is an insufficient basis on which to interfere with an inmate's religious exercise. He states that assuming that maintaining orderly day-to-day operations is a compelling state interest, the review committee must be required to craft "the least restrictive means of furthering that compelling governmental interest." In the event, the RRC's decision to deny an accommodation should be reviewed by a central office or regional administrator before it becomes final. This would ensure a more informed decision about whether to provide the accommodation. He contends that the proposed regulations should be amended to add these protections.

Accommodation: None.

Response D: See Speaker #1, Responses A and B. Also, Department contends that each RRC member will possess a broad base of knowledge regarding various aspects of majority and minority religions. The religious review committee may contact a community volunteer or a religious leader specific to the religion, to verify the legitimacy of any request and act accordingly. The RRC is required to verify the legitimacy of the request. Within the day-to-day operations of the institutions and in documenting all inmate activity and requests, including those of a religious nature, staff are required to document all such information in the inmate's Central File, thus providing written documentation. Again, all safety and security aspects of the request are reviewed by the departmental custody staff on the RRC. If the inmate receives an unsatisfactory

response to their request, the inmate may appeal following Section 3084.1 of the Title 15 with regards to the inmate's right to appeal any departmental decision, action, condition, or policy which they can demonstrate as having as adverse effect upon their welfare.

Comment E: Commenter contends that there is no time limit for the RRC to make a determination on an inmate's request, and no provision for whether an inmate is subject to discipline or other programming restrictions while his or her request is pending. Commenter contends that there should be a relatively short time period for the review committee to make a determination and that the regulation should also clearly state that the inmate shall not be disciplined, threatened with discipline, or forced to comply with the grooming standards while the review committee considers the request.

Accommodation: None.

Response E: Department contends that inmates must abide by the rules and regulations of the Department, including religious activities. An inmate must first submit a request to the RRC for religious accommodations prior to any change in their behavior. Inmates will be subject to discipline or other programming restrictions if the rules and regulations are not followed. The RRC will review all requests as expeditiously as possible. It is not the intent of the Department to delay any review of a religious accommodation.

Comment F: Commenter contends that the proposed regulations should provide that all discipline imposed against inmates for violating the grooming regulations, where such conduct was based on religious beliefs and practices, should be removed from the inmates' files and that lost credits should be restored.

Accommodation: None.

Response F: See Commenter #9, Response B.

COMMENTER #16:

Comment A: Commenter commends the Department for proposing regulations that strive to recognize the importance of allowing an inmate to adhere to the requirements of his or her faith, particularly allowing Sikh inmates to maintain their long, uncut hair without penalty.

Accommodation: None.

Response A: Department appreciates the Commenter's statement. As a result of numerous lawsuits regarding the religious rights of inmates, i.e. *Warsoldier v. Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); and *In re Corey Williams*, Case No.: SC133840A, (February 2004), the Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner.

Comment B: Commenter contends that the Sikh religion requires practitioners to keep their hair uncut and covered. Sikhs wear their hair tied neatly in turbans and are required to keep their beards uncut. He contends that as written, the proposed regulations will now allow Sikhs to keep their hair uncut without being penalized, but is vague and unclear as to whether a Sikh inmate can keep their hair covered in a turban. He states that in Section 3062(f), the regulations allow for an inmate to possess and use approved hair holding devices based on Section 3190, which governs personal property. He states that Section 3190(h)(1) and (4) refer to health care appliances and religious items. He states that as written this regulation does not provide adequate protection to allow a Sikh inmate to adhere to basic tenets of his faith to keep his hair covered, which is

tantamount to his faith. Commenter requests that the regulations be amended to specifically allow inmates to keep and wear turbans as part of their religious practice.

Accommodation: None.

Response B: See Speaker #2, Response C. The Department's intent is to treat individual religions equally, with regards to allowing headwear. The religious review committee *may* contact a community volunteer to verify the legitimacy of the request and act accordingly. The same would be true with any minority faith; the committee is required to verify the legitimacy of the request. However, safety and security considerations are also addressed as custody staff are a part of this committee.

Comment C: Commenter requests that Section 3062(h) be revised to allow Sikh inmates to keep their beards unshorn without penalty. Commenter contends that the central tenet of the Sikh faith is to keep his hair and beard uncut. It is common practice for Sikh men to keep their beards uncut and rolled neatly under the chin, which is less than an inch from the inmate's face.

Accommodation: None.

Response C: See Speaker #2, Response E and Speaker #3, Response D.

COMMENTS #17:

Comment A: Commenter states that he is commenting on behalf of the Sikh Mediawatch and Resource Task Force and seeks to educate society about the Sikh religion and culture. He states that the religion is over 500 years old and there are approximately half a million Sikhs living in the US.

Accommodation: None.

Response A: Department acknowledges and appreciates the above comments. The Department's intent is to address each individual religion's requests and concerns equally. Department also contends that all faiths are subject to the same safety and security requirements.

Comment B: Commenter commends the Department for amending the regulations to allow male and female inmates to maintain their hair at any length, however, he feels that the regulations do not go far enough in allowing for freedom of religious practice as outlined in RLUIPA. He states that Sikhs are required by their faith to keep uncut hair. He contends that Section 3063(h) is amended to require that an inmate's facial hair can extend no longer than one half-inch from his face and that this is a violation of the Sikh Rehat (religious code of conduct), in that it disallows a Sikh male from keeping his beard uncut. Commenter requests that the regulations have no length restrictions placed on an inmate's facial hair, so long as it is neatly tied up and does not extend more than 1 inch from the face. This will enable the Sikh inmates to adhere to their faith and comply with the Department's regulations.

Accommodation: None.

Response B: See Speaker #2, Response E and Speaker #3, Response D.

Comment C: Commenter contends that the regulations do not address or allow for religious head covering for inmates. He states that Sikhs, as mandated by their faith, are required to keep their hair covered at all times. He contends that both Jewish and Muslim inmates have been allowed accommodations for their yarmulke and skullcaps, so to disallow a Sikh inmate similar accommodation is a blatant violation of RLUIPA and the inmate's 1st Amendment Rights. Commenter requests that language be added to the existing text that allows for Sikh inmates to wear their turban while incarcerated. He contends that this will safeguard the right of the inmate to have their turban, but also allow for screenings by prison staff as they deem necessary.

Accommodation: None.

Response C: See Speaker #2, Response C. The Department's intent is to treat individual religions equally, with regards to allowing headwear. The Religious Review Committee may contact a community volunteer, to verify the legitimacy of the request and act accordingly. The same would be true with any minority faith; the committee is required to verify the legitimacy of the request. However, safety and security considerations are also addressed as custody staff are a part of this committee.

COMMENTS #18:

SEE SPEAKER #2. Speaker #2 read from his written statement at the Public Hearing, then submitted the document. Two exhibits were attached to the written comments. Both were only memorandums addressing individual accommodations at a prison in New York and in Pennsylvania.

COMMENTS #19:

Comment A: Commenter states that she has concerns with Section 3062(k) regarding jewelry or body piercing adornment, and specifically non-removable implant style jewelry. Though most body jewelry is not permanently implanted, there are many styles that are. Some are threaded stainless steel socket implanted under the skin, that protrudes to the surface of the skin, some are attached to the bone. Commenter describes the type of implants and the surgical procedure to implant and remove the implant. She contends that these implants can only be removed by professionals. She states that it concerns her that Department staff will be removing these types of implants to comply with this regulation and that this would cause harm to the inmate. Commenter describes in detail the removal process of the stainless steel implants and the harm that it would cause if removed improperly. She states that this is specialized jewelry, and often resembles removable jewelry, but it is not.

Accommodation: None.

Response A: Department contends that inmates shall not possess or wear any type of jewelry or other object intended to be worn as a body piercing adornment. This is necessary as it may pose a threat to the health and well-being of inmates, in that instruments or devices used for piercing may not be sterile, and could cause infections, as well as transmit blood-borne diseases. Additionally, these provisions are necessary because body piercing may be ripped out during an altercation, and they would also pose an additional safety and security risk as piercings can be altered to make weapons. The Department maintains a staff of physicians that could remove any body jewelry that is not in compliance with the rules and regulations of the Department. These physicians are also able to treat individual inmates whose wounds become infected.

Comment B: Commenter contends that beyond the discrimination of the 1st Amendment, she asks: what is the reasonable governmental interest of security and order in not allowing an inmate to keep a piece of body jewelry that he or she had prior to imprisonment. She also asks how is this restriction not greater than is necessary to further the legitimate governmental interest? How would there be an adverse impact on guards, other inmates and prison resources?

Accommodation: None.

Response B: Department contends that body jewelry poses an additional safety and security risk as piercings can be altered to make weapons. Additionally, these provisions are necessary because body piercings may be ripped out during an altercation. The safety and security of the institutions and inmates is a legitimate governmental interest for the Department. Safety and

security, if not addressed correctly, directly impacts departmental staff, other inmates and prison resources.

Comment C: Commenter contends that this regulation is discriminatory because it allows female inmates to wear earrings and does not allow male inmates to wear earrings. She states that many men have both ears pierced in 2006, and she believes this brings one's 1st amendment rights into question.

Accommodation: None.

Response C: The Department is not amending language in Section 3062(k) regarding the ability of males and females to wear earrings. The Department is required to respond to objections or recommendations specifically directed at the proposed action or to the procedures. The above comment is irrelevant because it does not specifically address language changes relevant to this action.

Comment D: Commenter questions what would happen when an inmate is pressured or is made to remove a permanent implant type of jewelry, and the area where the jewelry was closed up to the point where jewelry cannot be worn there until the implant procedure is done again. She asks who is responsible for the procedure to be performed again, once the inmate is out of prison? She does not understand how the Department can make a rule that forces an inmate to undergo a medical procedure to remove a non-life threatening piece of jewelry.

Accommodation: None.

Response D: Department contends that body jewelry poses an additional safety and security risk as piercing can be altered to make weapons. The body jewelry may be ripped out during an altercation which would cause harm to the inmate. Additionally, under the care and supervision of the Department, all inmates must abide by the rules and regulations as stated in the Title 15. Lastly, the Department is under no obligation to pay for a voluntary piercing by a parolee.

Comment E: Commenter asks why the Department is separating earrings from body jewelry? She contends that earrings are one of the earliest forms of body jewelry and a form of body piercing jewelry adornment. She contends that this rule is a form of discrimination. She states that there is not reasonable difference between male and female in relation to earrings and other forms of body jewelry.

Accommodation: None.

Response E: Department contends that body jewelry is, as the Commenter stated, implanted in the skin. This in and of itself leads to safety concerns within the institutions, due to the risk of infection if the implant is not taken care of properly, or to security concerns if the implant is ripped out during an altercation and then altered to make weapons. Body piercing is not allowed for either male or female inmates and is therefore not a form of discrimination, but is a safety and security issue.

Comment F: Commenter contends that in the Initial Statement of Reasons, she agrees with the statement that an inmate may not pierce any part of his/her body for the purpose of wearing an earring or other jewelry. She states that piercing should be done by a professional. She states that since body jewelry cannot be purchased or ordered by an inmate, it would be clear that the piece of jewelry was from prior to imprisonment.

Accommodation: None.

Response F: Department contends that body jewelry is a safety and security risk within the institution and the Department. The Department maintains a staff of physicians that could remove any body jewelry that is not in compliance with the rules and regulations of the Department. Body jewelry

that is implanted in a person prior to imprisonment is still a violation of the rules and regulations once the person is taken into custody.

Comment G: Commenter contends that to say this amendment is necessary because of the chance it might be ripped out during an altercation, is no more of a chance that an earring will be ripped out or one's lips will be cut because of braces or a watch ripped off the arm.

Accommodation: None.

Response G: Department contends that altercations within the institutions pose a safety risk to all inmates. It is the Department's responsibility to insure the inmates are as safe as possible, and eliminating body piercing as one of the risk factors is necessary for the protection of inmates.

Comment H: Commenter contends that it makes no sense to say that piercings can be altered to make weapons. She states that body jewelry is almost always no longer than ¾ inch and 18 gauges thick, similar to a small paperclip. She states that this thickness does vary, but it would be no more of a risk than other objects that inmates have access to like a can opener, fingernail clippers, pens, pencils, paper clips, state belt buckle, and other objects.

Accommodation: None.

Response H: Department contends that it is their responsibility to insure the inmates are as safe as possible, and eliminating body piercing as one of the risk factors is necessary for the protection of inmates. Weapon stock is partially defined by the inmate's security level and institution mission. Weapons can be made out of almost any type of hard or metal object, eliminating the metal that would come from body piercing is necessary to protect both inmates and staff.

COMMENTS #20:

Comment A: Commenter contends that he is at CSP-Corcoran, is a member of the Navajo Nation and a member of the Men's Advisory Council. He has taken classes in Business/Office Services and has his GED Certificate, and is continuing to educate himself regarding Native American teachings. He states that he believes in rehabilitation, which his religion plays a big part in his life. He contends that he was harassed and disciplined for keeping his long hair. He is glad to hear that the Department is changing the grooming standards. He states that it will move the Department toward a better environment.

Accommodation: None.

Response A: Department appreciates the Commenter's statement and also believes in the rehabilitation of inmates through education and allowing inmates to participate in individual religious programs.

Comment B: Commenter contends that he recently sent an appeal to Inmate Appeals to review regarding religious programs at CSP-Corcoran. He states that the appeal deals with the burden this prison placed on the Native American Indian Spiritual Circle and the request for Artifacts. He states that the prison has ignored their requests and does not want to come to an agreement. They used to have beadwork to construct sacred items, but it was disapproved. Commenter would like to know how the Religious Review Committee would benefit him as a whole dealing with any other topics that need to be discussed with staff. He states that he doesn't believe the new Warden is aware of this denial of the beadwork program.

Accommodation: None.

Response B: Department contends that Section 3190 (h)(4) allows special purchases of religious items, subject to approval. Safety and security of the operations of the institution will be considered

when determining whether to allow the special purchase or grant the accommodation. The Commenter may appeal, utilizing Section 3084.1 of the Title 15 with regards to the inmate's right to appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare.

Comment C: Commenter contends that his tribe helped the US win WWII by helping decode messages. They were known as the Navajo Code Talkers in the movie the Windtalkers. He states that he mentions this because he is trying to get tapes from a vendor who is not on the approved vendor list for Navajo language. He is trying to receive them through a Special Purchase order. He states that Muslims are allowed to have their tapes to speak Arabic for religious purposes, and he feels he is being discriminated against. He states that our country is at war with another linguistic group of people that speak Arabic. He asks is his language only good for war? He states that he should be able to speak to his Creator/Great Spirit and ancestors in prayer in a good way. He contends that this is a violation of the Native American Language Act under Title 25, Section 2901-2906.

Accommodation: None.

Response C: See Commenter #20, Response B above. Also, Department contends that all requests are treated equally, and inmates are not discriminated against due to their individual religions.

Comment D: Commenter contends that the staff are stating that he has to purchase already constructed religious items, but that this lacks religious/spiritual significance and prayer. He requests to be able to construct his own beadwork and he wants to be provided with herbs for religious significance.

Accommodation: None.

Response D: See Commenter #20, Response B.

Comment E: Commenter contends that there was another denial of religious rights regarding community religious volunteers and inmates in a special event called the Sacred Ceremony Pow Wow. He describes in detail the denial and the circumstances surrounding the Department's discrimination against Native Americans. He states that Muslims have had religious banquets, and Christian inmates and their friends and children have been allowed to visit and attend religious services.

Accommodation: None.

Response E: See Commenter #20, Response B. The Department maintains contact with members of various religions and consults with religious volunteers and religious representatives regarding treatment of religious requests within the institutions in an attempt to keep the lines of communication open and maintains equal treatment to all religions.

Comment F: Commenter states that he is enclosing a Native American Indian Religious Rights Packet that he put together during his 30 days of privilege loss. He states that he worked extra and became sick and almost died. He also wants an apology from the Director regarding the grooming policy that restricted hair length. He stated that he also enclosed a packet on the spirituality of their hair called Sweetgrass/Hair Teachings. He states that he was taken by physical force because of his long hair. He had long hair in other prisons and he states that he has an amputated leg.

Accommodation: None.

Response F: Department contends that all inmates must abide by the rules and regulations of the Department. All departmental staff are responsible to carry out the laws of the State of California and the rules and regulation of the Department.

Comment G: Commenter contends that CSP-Corcoran was visited by Native American Community Representatives and Spiritual Leaders to survey and evaluate the placement of a Sweat Lodge. He contends that the sites were inappropriate and inadequate. He details the problems with the Department selection of the site.

Accommodation: None.

Response G: Department contends that each individual religious accommodations request is reviewed for religious need, and safety and security of the institution. The RRC does not grant accommodations if it would impact facility/unit safety and security, and the orderly day-to-day operations of the institution. RRC possesses a broad base of knowledge regarding various aspects of majority and minority religious. The Religious Review Committee may contact a community volunteer or a religious leader specific to the religion, to verify the legitimacy of any request and act accordingly. The RRC is required to verify the legitimacy of the request. If the inmate receives an unsatisfactory response to their request, the inmate may appeal following Section 3084.1 of the Title 15 with regards to the inmate's right to appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare.

Comment H: Commenter contends that CSP-Corcoran staff are not in compliance with RLUIPA. He describes what RLUIPA states and that it is Constitutional Law that protects religious programs and accommodations for institutionalized people. He states that in the Initial Statement of Reasons the Department is not a religious expert and that the Religious Review Committee at each institution reviews and reaches decisions regarding religious accommodations. The Native American Indian Community elders should be involved in the RRC.

Accommodation: None.

Response H: See Speaker #1, Response B.

Comment I: Commenter request to establish a cultural group known as Inmate Leisure Time Activity Group. He also states that the prison needs to have AA groups for Lifers, specifically designed for Native Americans to keep their traditions alive. He wants them to seek rehabilitation and not return to the old ways and change their life. He has a parole plan to go to college when he gets out and change his ways.

Accommodation: None.

Response I: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 113435.9, the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment J: Commenter enclosed a Native American Indian Religious Rights Packet. This is a packet which the Commenter intends to distribute to inmates as a Letter Writing Campaign against the Department. The packet goes into great detail about restrictions of religious rights on Indians, the history of Native American religious rights, legal rights of Native Americans in prison, "The Issue of Long Hair," testimony of religious beliefs of Indians with long hair, the Department's hair cut policy is a substantial burden for Indians belief, Title 15, new vendor/property notice to change to regulations, intolerance towards Indians from State and Federal – history to present, history of California's intolerance toward Indians, California Governor Schwarzenegger Upset Indians, President Bush's remark on tribal sovereignty at UNITY, officials to contact institutional, State and Federal, Sweetgrass/hair teachings, and the Teachings of the Medicine Wheel. All comments made in this packet have been previously stated in the Commenter's initial statement. This packet has extensive history regarding numerous aspects of Native American Indian Religious Rights.

Accommodation: None.

Response J: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 113435.9, the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. Department also contends that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, irregardless of their religion, race, ethnic background, or sex.

ADDENDUM TO FINAL STATEMENT OF REASONS

The following text is changed:

Section 3210(a) – a comma was inadvertently underlined in the following text "... welfare of all interested inmates, including, but not limited to, affording..." The underline is to be removed.

Following are changes in the FSOR for clarity purposes to the responses to the commenters:

COMMENTER #3:

Comment A: Commenter contends that he is a Fire Captain with the Department of Forestry and has worked with the Conservation Camp program for 21 years. He states that inmate participation is voluntary and provides many benefits to inmates.

Accommodation: None.

Response A: Department contends that inmates that hold positions within the Department or outside in Conservation Camp programs must continue to abide by the Rules and Regulations of the Department. Department contends that these regulations allow an inmate's hair to be any length but shall not extend over the eyebrows, cover the inmate's face or pose a health and safety risk. The emphasis is whether long hair or a one-half inch beard would pose a safety risk when inmates are on the fire line. Similar to inmates who work in other potentially hazardous positions either in or outside of the institution, those who participate in the camp programs will know the danger involved in working on the fire line and will voluntarily abide by the rules for the safety and security, not only for others but for themselves as well. Inmates, who abide by the grooming standards of the Department, will be allowed to participate in camp programs as long as they have passed all requirements to participate in camp programs.

COMMENTER #4:

Comment B: Commenter contends that inmates assigned to a conservation camp are involved with the public. He states that the inmates will look like "thugs/inmates" as they looked many years ago prior to the implementation of the current grooming standards. He contends that firefighting inmates should have a sense of pride and that the Fire Captain considered them as part of the team. They should be expected to maintain the same grooming standards that the CDF Captain abides by. He contends that inmates should be expected to maintain the same set of grooming standards as the staff they are working for in CDF, and those watching over them in the CDCR.

Accommodation: None.

Response B: See Commenter #3, Response A. Additionally, inmates who have been authorized to participate in camp programs and, who have requested religious accommodation regarding grooming standards pursuant to RLUIPA, unless prohibited due to safety and security and the disruption of day to day operations shall be allowed to participate in the camp programs.

Comment C: Commenter contends that this regulation change is the wrong way to go for inmates participating in the camp program. He states that if inmates want a certain length of hair, then they should be allowed to do so inside of the prison walls, but they should not be allowed to participate in a camp program. He states that inmates earn 2 for 1 credit for their participation, which is a very good benefit, not to mention the positive influence the hard work and the daily routine provides some of these inmates. He states that some have never held a steady job in their lives.

Accommodation: None.

Response C: See Commenter #3, Response A and Commenter #4, Response B.

COMMENTER #15:

Comment E: Commenter contends that there is no time limit for the RRC to make a determination on an inmate's request, and no provision for whether an inmate is subject to discipline or other programming restrictions while his or her request is pending. Commenter contends that there should be a relatively short time period for the review committee to make a determination and that the regulation should also clearly state that the inmate shall not be disciplined, threatened with discipline, or forced to comply with the grooming standards while the review committee considers the request.

Accommodation: None.

Response E: Department contends that inmates must abide by the rules and regulations of the Department, including religious activities. An inmate must first submit a request to the RRC for religious accommodations prior to any change in their behavior. Inmates will be subject to discipline or other programming restrictions if the rules and regulations are not followed. The RRC will review all requests as expeditiously as possible. It is not the intent of the Department to delay any review of a religious accommodation. The Department, after accepting requests for accommodations, will attempt to prioritize requests received and provide an answer to the inmate either accommodating the request or the reasoning for the request not being granted prior to the date request or as soon as reasonably possible.